

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-32

February 3, 2004

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Business Options

NOTICE OF INVESTIGATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Notice, the Commission initiates an investigation into possible violations of unauthorized carrier change laws and regulations by Business Options, Inc. (BOI).

II. BACKGROUND

On January 23, 2004, the Commission's Prosecutorial Staff (Staff) filed a Prosecutorial Report (Report) stating that BOI had violated 35-A M.R.S.A. § 7106 and Chapter 296 of the Commission's rules by making 195 unauthorized carrier changes. Specifically, the Report states that:

BOI used deceptive tactics in its marketing and third-party verification (TPV) procedures to induce Maine consumers to either unknowingly consent to a change in their intrastate toll carrier or to provide personal information which was used to make the change in carrier without the consumer's express consent. BOI marketing personnel intentionally misrepresented themselves to Maine consumers, many of whom were elderly, to mislead consumers into believing that they were speaking to Verizon or AT&T personnel (rather than BOI personnel) and that "Business Options" was merely a calling plan offered by Verizon or AT&T to good customers who paid their bills on time.

The Report also indicates that the Commission's Consumer Assistance Division (CAD) has received 183 complaints of slamming against BOI and has made findings of slamming in 167 of those complaints.

Because of the unusually high number of complaints and the deceptive practices it believes BOI has used, the Staff requests that the Commission assess an administrative penalty of \$750,000 pursuant to 35-A M.R.S.A. § 7106. The Staff also requests that the Commission revoke BOI's certificate to operate in Maine and refer the matter to the Attorney General's Office for possible criminal prosecution.

III. DECISION AND PROCEDURES

Upon review of the Report and its exhibits, we conclude that an investigation into the carrier change practices of BOI is warranted. Accordingly, we initiate an investigation pursuant to 35-A M.R.S.A. §§ 1303(2) and 7106 into the allegations of violations of statutes and rules raised in the Report. The investigation will also include a consideration of all appropriate sanctions for statute and rule violations including, but not limited to, administrative penalties to the full extent authorized in 35-A M.R.S.A. § 7106, and the revocation of BOI's authority to provide service in Maine.

BOI is hereby made a party to this proceeding. The Staff will also serve as a party. Any other person who wishes to participate in this proceeding as a party must file a petition to intervene with the Commission's Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, by February 10, 2004. Petitions to intervene must be in writing and state the name and docket number of this proceeding and how the petitioner is affected by it. The petition should also include a short and plain statement of the nature and extent of the participation sought. Persons who wish to monitor the proceeding, but do not want to be a party, may request to be placed on the Commission's interested person list by contacting the Commission's Administrative Director at the same address listed above.

The Hearing Examiner assigned to this proceeding shall adopt a procedural schedule for the investigation.

Dated at Augusta, Maine, this 3rd day of February, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.